IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.5154 OF 2004

Shardaben wd/o Mangaldas Bhavsar
& others .... Petitioners
Vs.
Smt. Fatmabai Alibhai
(since deceased) .... Respondents

Shri V.S. Dighe for the Petitioners.

None for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 04, 2004

P.C:

1. Heard the learned Advocate for the petitioners. Perused the records.

2. The petitioners challenge the concurrent findings as regards the sub-letting of the suit premises by the petitioner/tenant and order of eviction on that ground. The findings are sought to be challenged being contrary to the materials on record in as much as that the agreement between the parties i.e. between the petitioners and the alleged licensee of the petitioners apparently disclose that the licensee was not in exclusive possession of the part of the premises which was alleged to have been used by the licensee. It was also sought to be contended that the said finding is

contrary to the provisions of law comprised under Section 13(1)(e) r/w Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Attention was also sought to be drawn to the specific finding by the Court below that the loft area is in the exclusive possession of the petitioners.

3. Perusal of the impugned judgments and orders of both the Courts below apparently disclose that on assessment of the evidence on record the Courts below have arrived at the concurrent finding regarding parting with possession of part of the premises by the petitioners, warranting eviction on the ground of Section 13(1)(e) of the said Act. The judgments also disclose detail analysis of the agreement of licence entered into between the petitioners and the licensee and further observation to the effect that though the agreement on the face of it includes a clause that the exclusive possession of the premises shall be with the licensor, the evidence on record has proved to the contrary. It has also been observed by the Court below that though the terms and conditions of the agreement require the licensee to pay the electricity charges as per the actual consumption thereof by the licensee, admittedly, there are no two separate electric meters provided to the premises and the petitioners have not even led any evidence to disclose what part of the electricity

consumption was being paid by the licensee and what part of the consumption was being paid by the licensee. The findings arrived at by the Courts below being clearly borne out from the records and disclose having been arrived at on proper analysis of the evidence on record, the same do not warrant interference in writ jurisdiction. There is absolutely no application of the provision of law comprised under Section 15A to the facts of the case and having read such provision with the provision of Section 13(1)(e), it does not enure to the benefit of the petitioners to contend that the Courts below have erred in law while ordering the eviction of the petitioners on the ground of sub-letting.

4. For the reasons stated above, therefore, there is no case for interference in exercise of power under Article 227 of the Constitution of India in the concurrent finding arrived at by the Courts below and therefore the petition fails and is hereby rejected.

5. On oral request by the learned Advocate for the petitioners, time to vacate the suit premises is extended till 31-1-2005, subject to submitting undertaking by the petitioners and every major member of the petitioners' family as well as those occupying the premises, to be filed before the Registrar (Judl.) of

this Court within three weeks from today assuring that the petitioners shall handover the vacant and peaceful possession of the suit premises to the respondents/landlord on or before 31-1-2005 and shall not induct any third person nor shall create any third party interest in the suit premises.